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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,920	10/16/2003	Michael J. Shanor	380-149	7506
1009	7590	09/07/2006		
KING & SCHICKLI, PLLC 247 NORTH BROADWAY LEXINGTON, KY 40507			EXAMINER TILL, TERRENCE R	
			ART UNIT 1744	PAPER NUMBER
DATE MAILED: 09/07/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/686,920	Applicant(s) SHANOR, MICHAEL J.	
	Examiner Terrence R. Till	Art Unit 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 21-24 is/are rejected.
- 7) ☒ Claim(s) 9-20 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>2/04, 3/04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 2, and 24 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 and 22 of copending Application No. 10/686,919. Although the conflicting claims are not identical, they are not patentably distinct from each other because the combination of claims 1 and 2, and claim 22, of the '919 patent disclose a housing; a nozzle inlet; a suction generator carried on the housing; and a dirt cup (dirt vessel) carried on the housing, said dirt cup including a bottom wall, a side wall, a dirt collection chamber, an air inlet to said dirt collection chamber in said bottom wall (recited in claim 2) and an air outlet from said dirt collection chamber. Claim 3 of the '919 application also discloses an air inlet conduit. The combination of claims 1 and 2, and claim 22, of the '919 patent also disclose all the subject matter of claim 24 of the present application, including a dirt collection assembly comprising a dirt cup including a side wall, bottom wall and an air inlet in said bottom wall (recited in claim 2) and an air outlet. Thus, claims 1-3 and 22 of the '919

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application fully encompass the claimed subject matter of claims 1, 2, and 24 of the present application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

3. Claims 1 and 24 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of copending Application No. 10/929,642. Although the conflicting claims are not identical, they are not patentably distinct from each other because the combination of claims 1-3 of the '642 patent disclose a housing; a nozzle inlet; a suction generator carried on the housing; and a dirt cup (dirt collection assembly) carried on the housing, said dirt cup including a bottom wall, a side wall (recited in claim 2), a dirt collection chamber, an air inlet to said dirt collection chamber in said bottom wall (recited in claim 3) and an air outlet from said dirt collection chamber. The combination of claims 1-3, of the '642 patent also disclose all the subject matter of claim 24 of the present application, including a dirt collection assembly comprising a dirt cup including a side wall, bottom wall and an air inlet in said bottom wall (recited in claim 3) and an air outlet. Thus, claims 1-3 of the '642 application fully encompass the claimed subject matter of claims 1, and 24 of the present application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 21 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Grey (US-6,243,912).

6. The patent to Grey discloses (figure 1) a housing 10; a nozzle inlet 50; a suction generator 20 carried on the housing; and a dirt cup 40 carried on the housing, said dirt cup including a bottom wall 43, a side wall 41, a dirt collection chamber, an air inlet to said dirt collection chamber in said bottom wall, an air inlet conduit 46 having an air deflector 63,64 carried on the inlet conduit and an air outlet from said dirt collection chamber. With respect to claim 21, Grey is considered to inherently disclose a method of routing air through a vacuum cleaner comprising drawing air into a vacuum cleaner nozzle 50 directing air from the nozzle into a dirt cup 40 through a bottom wall 43 of the dirt cup and exhausting the clean air from the vacuum cleaner.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 4-8, 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grey (6,243,912) in view of Grassler (133,436).

10. Grey does not disclose, an air deflector that is arcuately shaped. However, the patent to Grassler discloses an arcuately shaped air deflector "H" located above air conduit "F". The arcuately shaped deflector is a substantially hemihorn torus shape. Therefore, it would have been obvious to a person skilled in the art at the time the invention was made to modify the air deflector of Grey to be arcuately shaped in view of the teaching of Breton as a change in shape or form is generally recognized as being within the level of ordinary skill in the art. In re Dailey, 149 USPQ 47 (CCPA 1976). With respect to claim 5, Grassler additionally discloses an annular screen section "H". It should be noted that in an alternate embodiment (figure 2) of Grey, he discloses a filter 71 and a deflector 73 attached to the filter. Therefore, it would have been obvious to a person skilled in the art at the time the invention was made to substitute the deflector of Grey with an arcuate deflector and annular screen section in view of the teaching of Grassler in order to contain any airborne debris. Once modified, Grey would have the supports contact the arcuate air deflector section and the annular screen extending concentrically around the air deflector section and have an axial inlet opening and a radially directed outlet opening. With respect to claims 22 and 23, Grey, as modified by Grassler, is considered to render obvious all the claimed method steps of a method of directing an airstream in a dirt cup comprising directing an airstream upwardly through the dirt cup 40 in an air inlet conduit 46; discharging the

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airstream from the air inlet conduit into the dirt cup in a substantially hemihorn torus shape (as modified by Grassler) and exhausting the airstream from a dirt cup. It is recognized that Grassler is a spark arrestor for a locomotive, but one can clearly appreciate that the invention of Grassler is directed to filtering (filtering sparks) and that the shape of the deflector can be anything that directs the material to be filtered downwardly.

Allowable Subject Matter

7. Claims 9-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

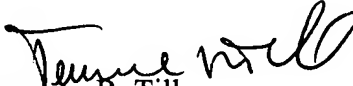
8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Rice, Duffie, Vose, Cyphert, Optenberg, Graves and Japanese patent to Ohira et al. disclose filtering assemblies/vacuum cleaners with deflectors.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Terrence R. Till whose telephone number is (571) 272-1280. The examiner can normally be reached on Mon. through Thurs. and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys P. Corcoran can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Terrence R. Till
Primary Examiner
Art Unit 1744

trt